IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15736 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MINOR VIVEK LALIT THAPA THRO FATHER & GUARDIAN LALIT K.THA- - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
Mr. S.I. Nanavati, learned sr. counsel with Mr. Saurin A. Mehta for

NANAVATI & NANAVATI for Petitioner No(s).: 1.

Mr. Mukesh Patel, AGP, for Respondent No(s).: 1,2.
DS AFF.NOT FILED (N) for Respondent No(s).: 3.
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 10/08/2005

ORAL JUDGMENT

1. Vivek Lalit Thapa, petitioner, has filed this petition under

Articles 226/227 of the Constitution of India with a prayer that this Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus and other appropriate order or direction, directing the respondents i.e., respondent No. 1 the Secretary to the Government of Gujarat, respondent No. 2 the Joint Admission Committee and respondent No. 3 the Principal, Government Engineering College, Gandhinagar, to forthwith consider the case of the petitioner for admission to the First Year Course in Degree Engineering, Degree/Diploma Pharmacy for the academic year 2005-2006 under the “Physically Handicapped” category and/or direct respondent No. 3 to allow the petitioner to pursue his studies. This petition was filed on 2.8.2005. On 3.8.2005 this Court has issued notice returnable on 4.8.2005. On 4.8.2005 this Court has passed order. Pursuant to that order, on behalf of respondent No. 3, one R.R. Manchiganti, In-Charge Principal, Government Engineering College, Gandhinagar, has filed affidavit in reply dated 8.8.2005. Though respondent Nos. 1 and 2 are served, they have not filed separate affidavits but at the time of hearing of the petition Mr. Mukesh Patel, learned AGP, appears on behalf of respondent Nos. 1 and 2. Respondent Nos. 1 and 2 have adopted the affidavit in reply filed by respondent No. 3. This being student matter Mr. S.I. Nanavati, learned counsel for the petitioner has requested this Court to take up this matter for final disposal because he has stated that the admission process is going on at the college. Hence Rule. Mr.

Mukesh Patel, learned AGP, waives service of Rule on behalf of the respondents. With the consent of parties matter has been taken for final disposal today i.e., 10.8.2005.

2. BACKGROUND OF THE MATTER:

2.1 The facts giving rise to this petition are as under:

2.2 The petitioner is undisputedly is a physically handicapped person declared by the competent authority somewhere in May 2004. The petitioner approached respondent No. 3 College somewhere in July, 2004 for reporting to study in the College. From the record it appears that initially the petitioner was granted admission by the College (for the year 2004-2005). It may be noted that even the College has also issued notice dated 1.7.2005 which is on page 65 which reads as under:

> "All the students of B.E. First Year, academic year 2004-05 Govt. Engg. College, Sector 26, Gandhinagar, are hereby instructed to pay the first term fees between 13.7.2004 to 20.7.2004. The teaching session will begin on 5.8.2004. Those who fail to pay the fees will be treated as not interested in this admission."

2.3 Thereafter, the petitioner did not pay first term fees as contemplated by notice dated 1.7.2004. The petitioner did not report to the College after August 2004 In view of this, it appears that respondent No. 3 addressed a letter dated 24.3.2005 which is at page 62 of the petition. The said letter reads as under:

> "We wish to inform you that due to consistent absence at the time of reporting at the college after availing admission from Joint Admission Committee for Professional Courses, Ahmedabad, your admission automatically stands cancelled. Hence you are requested to arrange for the collection of the mark sheet from our end."

3. THE PREENT CONTROVERSY:

3.1 The petitioner states that for the year 2005-2006, the petitioner once again submitted his application for getting admission to the First Year Course in Degree Engineering. However, the petitioner received an information that respondent No. 2 did not accept the admission form of the petitioner on the ground that Rule 4.3 of the Rules and Regulations framed by the Government provides that the student may not get admission if the same student should have secured admission in any course in Gujarat State in any year previously, through the Central Admission Committee. Rule 4.3

of the Rules and Regulations is reproduced as follows:

> “The candidate should not have secured admission in any course in Gujarat State in any year previously, through this Central Admission Committee.”

3.2 From the record it is apparent that it is not only the case of the petitioner but even in the affidavit in reply which has been filed by respondent No. 3 in para 14 wherein it has been categorically stated that the petitioner student's application form for the academic year 2005-2006 is not acceptable in view of the provisions made under Rule 4.3 along with the earlier facts.

3.3 Mr. S.I. Nanavati, learned sr. counsel, for the petitioner submitted that it is no doubt true that the petitioner applied for admission last year but due to various reasons he did not pursue the said admission and ultimately he did not pay fees and did not attend the class and his admission was cancelled by the letter dated 24.3.2005.

3.4 The learned counsel therefore submitted that in view of the categorical position as previous admission has been cancelled so the reliance placed by the authority on Rule 4.3 is misplaced. According to him, Rule 4.3 of the Rules will not apply in the facts of the

petitioner.

3.5 The learned counsel further submitted that once there is no admission in the eye of law of the petitioner, the petitioner is entitled to admission for the academic year 2005-2006 in accordance with law in the category of handicapped if the seat is available as per the provisions of law.

4. Mr. Mukesh Patel, learned AGP, for the respondents has stated that this Court must interpret Rule 4.3 in the background of the case. It is no doubt true that admission has been cancelled by the college but admission has not been cancelled by the JAC (Joint Admission Committee – PC). He has relied on Rule 22 which provides cancellation of admission and refund of fees.

4.1 It is no doubt true that on the first blush the arguments of the learned AGP seem to be attractive but in view of the categorical communication by the authority wherein it is stated that the petitioner's admission automatically stands cancelled. In view of the same, when the college has addressed the said communication and there is no other further communication from the JAC-PC it appears that the authority has accepted this position and admission of the petitioner is cancelled.

5. I have considered the rival submissions. If one reads notice dated 1.7.2004 along with communication dated 24.3.2005 which I have already quoted in my considered view admission of the petitioner has been cancelled for the last year (i.e. 2004-2005) and therefore in law the petitioner did not hold any valid-legal admission in the class for the last academic year. In view of the same, reliance placed by the authority on Rule 4.3 is misplaced. So the sole reason/ground given by the respondent authority that the petitioner cannot be given admission because of the applicability of Rule 4.3 is unjustified and unwarranted.

5.1 However, it may be noted that the authority has stated that the admission for the year 2005-2006 started from 12.5.2005 to 23.6.2005 and the last date for filing the form is extended upto 10.6.2005. The respondents have stated that the petitioner student had never raised any grievance in that regard that till 8.7.2005 as he (petitioner) was taking a chance for admission to medical course. Thus, the petitioner cannot ride two horses at the cost of eligible students which was not permissible. It is no doubt true that admission process has started. However, I am informed that still the admission process and cancelling is going on. It has been stated that there are total 82 handicapped seats (reserved), out of that 24 seats have been filled up and other seats have been converted into open category. This Court therefore directs the respondent authorities

that they will consider the case of the petitioner in the case of “physically handicapped” category and if he is entitled as per the marks obtained for admission, the authority will consider his case in that category. It is needless to say that the authority will accept the form and consider the case of the petitioner in accordance with law but without considering Rule 4.3 in view of the observations made in the order.

5.2 From the record it appears that this order has been made after admission process already started of the academic term 2005-2006 and therefore this case is decided in peculiar facts and circumstances because the petitioner is a handicapped person. So this case may not be treated as precedent. The petition is allowed. Rule is made absolute to the aforesaid extent.

5.3 Mr. Mukesh Patel, learned AGP, requests that this order may be stayed for 15 days. Looking to the fact that this is being student admission matter and if the prayer for staying the order is considered, the whole purpose of the order is frustrated. Therefore, the prayer made by the learned AGP is rejected. The writ of this order may be sent forthwith.

(K.M. MEHTA, J)

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